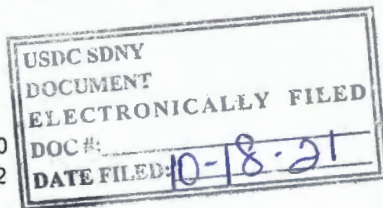




**Kevin P. Mulry**  
Partner

Direct Dial: 516.227.0620  
Direct Fax: 516.336.2262  
kmulry@farrellfritz.com



## MEMO ENDORSED

400 RXR Plaza  
Uniondale, NY 11556  
www.farrellfritz.com

Our File No.  
38110-100

October 7, 2021

By ECF and E-Mail

Honorable Lewis A. Kaplan  
United States District Judge  
Southern District of New York  
United States Courthouse  
500 Pearl St.  
New York, NY 10007

**Re: *Kleeberg, et al. v. Eber, et al.***  
**Docket No. 16-cv-9517 (LAK)**

Dear Judge Kaplan:

We represent Defendants in the above-captioned action. This letter is respectfully submitted, on consent of Plaintiffs, to request that the parties' post-trial proposed findings of fact and conclusions of law be filed under seal or, in the alternative, that they be provided to the Court and all parties electronically on the scheduled dates for submission and that they be filed on ECF at the time of the filing of the Plaintiffs' reply brief, or such later time as ordered by the Court.

The Court suggested to the parties on several occasions during the trial that they consider settlement. See 9/14/21 Tr. at 2:25 to 3:20; 9/15/21 Tr. at 223:24 to 224:1; 9/21/21 Tr. at 382:18 to 383:22; 9/22/21 Tr. at 526:4-7. The parties have had preliminary discussions concerning settlement. The trial record includes substantial confidential business information of the Defendants, and immediate public disclosure of this information and the parties' post-trial briefing could have an adverse effect on both settlement discussions and the competitive position of Eber-Ct. A deferral of public filing of the post-trial briefing would also advance the Court's desire to maintain the status quo, so that "[t]here ought to be a standstill mode until you either settle it or get a decision." 9/22/2021 Tr. at 535:18-19

For these reasons, we respectfully request, on consent of Plaintiffs, that either: (a) the parties file their post-trial submissions under seal, or (b) the parties initially submit their post-trial submissions electronically to the Court and all counsel on the scheduled dates for submission,

Honorable Lewis A. Kaplan  
October 7, 2021  
Page 2

and that they all be filed on the date of the reply brief, or on such other date as ordered by the Court.

Plaintiffs will be serving their papers later today, so we respectfully request that the Court advise the parties of its ruling on this request today if possible, but if that is not possible, request that Plaintiffs serve their submissions by email pending the Court's decision, since a sealing order or motion by Plaintiffs would be necessary to file under seal via ECF.<sup>1</sup>

We thank the Court for its consideration of this matter.

Respectfully submitted,

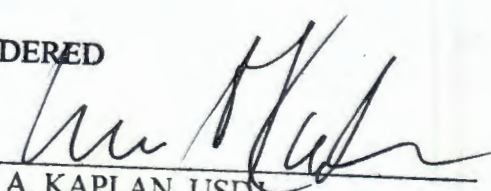
s/ Kevin P. Mulry

Kevin P. Mulry

cc: All counsel (By ECF and E-mail)

Granted to the extent  
that the parties shall  
submit further post-trial  
submissions electronically  
and in hard copy to chambers  
on dates previously set  
but may delay filing them  
on the ECF until the date  
for filing of the reply  
brief.

SO ORDERED

  
LEWIS A. KAPLAN, USDJ

<sup>1</sup> The parties reserve the right to request that specific portions of the filings remain under seal even after a final decision to the extent that (a) sealing is justified by sufficiently compelling concerns and (b) the court does not expressly rely on the facts to be placed under seal.

10/18/21